1	EDMUND G. BROWN JR., Attorney General of the State of California		
2	ARTHUR D. TAGGART Supervising Deputy Attorney General		
3	JEFFREY M. PHILLIPS, State Bar No. 154990 Deputy Attorney General		
4	1300 I Street, Suite 125 P.O. Box 944255		
5	Sacramento, CA 94244-2550 Telephone: (916) 445-0767		
6	Facsimile: (916) 324-5567		
7	Attorneys for Complainant		
8	BEFORE THE BOARD OF REGISTERED NURSING		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 2008-284	
12	JOHN MARCA, JR., 508 West Stuart Avenue, Apt. A	ACCUSATION	
13	Clovis, California 93612	Necosarion	
14	Registered Nurse License No. 518369		
15	Respondent.		
16		·	
17			
18	Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:		
19	<u>PARTIES</u>		
20	Complainant brings this Accus	sation solely in her official capacity as the	
21	Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer		
22	Affairs.		
23	Registered Nurse License		
24	2. On or about December 26, 199	95, the Board of Registered Nursing issued	
25	Registered Nurse License Number 518369 to John Marca, Jr., ("Respondent"). The registered		
	<b>\</b>	nurse license will expire on March 31, 2009, unless renewed.	
26		enewed.	
<ul><li>26</li><li>27</li></ul>		enewed.	

# **STATUTORY PROVISIONS**

- 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
  - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

#### REGULATORY PROVISION

6. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

#### **COST RECOVERY**

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## 8. DRUGS

"Versed", a brand of midazolam, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(21), and a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under federal law.

"Romazicon", a brand of Flumazenil is a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under federal law.

## FIRST CAUSE FOR DISCIPLINE

# (Gross Negligence)

9. Respondent is subject to discipline under Code section 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that on or about July 15, 2006, while on duty as a registered nurse at Mercy Medical Center Emergency Department, Merced, California, and caring for Patient A., a 77 year old female brought to the emergency room in a non-responsive status, Respondent committed acts constituting gross negligence, as defined in California Code of Regulations, title 16, section 1442. Respondent failed to administer medications safely to a patient under his care and thereby placed the patient at increased risk for an unsatisfactory outcome of the rapid sequence induction (RSI) procedure and subsequent resuscitation effort. At approximately 12:25 p.m., Respondent administered 10 mg of Versed to Patient A instead of the physician ordered 2 mg. To counteract the 10 mg of Versed, Respondent administered Romazicon to Patient A, without a physician's order. The patient was pronounced dead at approximately 12:45 p.m.

## SECOND CAUSE FOR DISCIPLINE

## (Unprofessional Conduct)

10. Respondent is subject to discipline under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as more particularly set forth in paragraph 8, above.

#### **OTHER MATTERS**

11. On March 3, 2005, in the Superior Court, Merced County, California, in the matter entitled *People vs. John Marca* (Super. Ct., Merced Cty., 2005, Case No. LF38589),

1	Respondent was convicted by the court on his plea of nolo contendere of a violation of Penal	
2	Code section 273A, subdivision (a) (willful harm or injury to a child), a misdemeanor.	
3	PRAYER	
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
5	alleged, and that following the hearing, the Board of Registered Nursing issue a decision:	
6	1. Revoking or suspending Registered Nurse License Number 518369, issued	
7	to John Marca, Jr.,	
8	2. Ordering John Marca, Jr., to pay the Board of Registered Nursing the	
9	reasonable costs of the investigation and enforcement of this case, pursuant to Code section	
10	125.3; and,	
11	3. Taking such other and further action as deemed necessary and proper.	
12		
13	DATED: 41 141 08	
14		
15	RUTH ANN TERRY, M.P.H., R.N.	
16	Executive Officer Board of Registered Nursing	
17	Department of Consumer Affairs State of California	
18	Complainant	
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